

BARNES & THORNBURG LLP

Chad S.C. Stover.
(302) 300-3474
Email: chad.stover@btlaw.com

1000 N. West Street, Suite 1500
Wilmington, Delaware 19801
(302) 300-3434
Fax (302) 300-3456

November 20, 2018

VIA CM/ECF AND HAND DELIVERY

The Honorable Sherry R. Fallon
United State District Court for the
District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3570

Re: *AgroFresh Inc. v. MirTech, Inc., et al.*, C.A. No. 16-662-MN-SRF

Dear Judge Fallon:

This is AgroFresh's opening letter brief on the issue of scheduling depositions in India. This issue is scheduled to be heard on November 27, 2018 at 2 p.m.

Consistent with the Court's ruling at the November 7, 2018 hearing that the depositions of Mr. Kumar and Mr. Kaushik of UPL should proceed in India, AgroFresh noticed their depositions for December 13th and 14th, respectively.¹ See Notices of Deposition, attached as Exs. A and B. AgroFresh also served a Rule 30(b)(6) deposition notice on UPL requesting testimony on fourteen topics on December 10th and 11th. See Ex. C. Despite previously telling the Court that it would designate "potentially several 30(b)(6) designees" (D.I. 262 at 4), UPL's counsel has now confirmed that Mr. Kumar and Mr. Kaushik will be the only UPL designees, although they have not yet said what witness will cover what topic.

Rather than produce its witnesses on the noticed dates and at the noticed times, however, UPL wants to set its own schedule, producing its witnesses at dates and times of its unilateral choosing. But AgroFresh's deposition notices were served almost a month before the noticed dates, far in advance of the 10-day notice required by the local rules. D. Del. L.R. 30.1. And the notices are reasonable and in compliance with this Court's order. UPL has not shown any reason, let alone "good cause," to modify AgroFresh's notices. See Fed. R. Civ. P. 26(c) ("the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden"). UPL should be compelled to produce its witnesses in India on the noticed dates and times.

¹ AgroFresh plans to take these depositions by video, with the witnesses appearing at a law firm near where they live and work, in Mumbai, India.

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As to Mr. Kumar, UPL will only agree to produce him on December 10th because he allegedly has international travel scheduled to begin on the 11th. Mr. Kumar first claimed international travel to the U.S. was an inconvenience dictating he should be deposed in India, and now he is attempting to avoid a deposition noticed near his home in India because of international travel. He cannot have it both ways. Mr. Kumar should be ordered to appear for his personal deposition on the noticed date of December 13th. And if UPL designates Mr. Kumar on Rule 30(b)(6) topics as it says it will, Mr. Kumar should appear on December 10th or 11th to testify on those topics.

As to Mr. Kaushik, UPL will only agree to produce him on December 13th with an extra day possibly on the 12th or 14th. Mr. Kaushik appears to be available for his Rule 30(b)(1) deposition on the noticed date of December 14th. He should be compelled to appear on that day. As to the Rule 30(b)(6) topics on which UPL designates Mr. Kaushik, he should be compelled to appear on December 10th or 11th to testify on those topics. UPL has provided no good cause to proceed on different dates.

As to all the UPL depositions, UPL wants to **start** the depositions at 10:30 **p.m.** Eastern US time and continue through the night. AgroFresh noticed the depositions to start at 2:30 p.m. India Standard Time, which is 4 a.m. Eastern US time. AgroFresh's proposal minimizes the inconvenience to both counsel and the witnesses. Under AgroFresh's proposal, counsel must start the depositions much earlier than usual (4 a.m.) and the witness may need to stay modestly past the normal close of business in India. UPL's proposal, on the other hand, would force AgroFresh's counsel to work through the entire night. The Court should overrule UPL's objection and adopt AgroFresh's proposal because it is the most reasonable.

For the reasons stated above, AgroFresh moves the Court to overrule UPL's objections to the timely and reasonable notices and order UPL to produce its Rule 30(b)(6) designee(s) on December 10th and 11th, produce Mr. Kumar on December 13th, and produce Mr. Kaushik on December 14th, all starting at 2:30 p.m. India Standard Time.

Respectfully submitted,



Chad S.C. Stover (DE Bar No. 4919)

cc: All Counsel of Record (via CM/ECF)